

**IN THE HIGH COURT OF TANZANIA
(MOROGORO SUB-REGISTRY)**

AT MOROGORO

LAND APPEAL NO. 56 OF 2022

(Arising from Land Application No. 16 of 2020, Before the District Land and Housing Tribunal for Ulanga, at Mahenge)

HUSSEIN ALLY TEMELAAPPELLANT

VERSUS

FARHANI NGAMELARESPONDENT

JUDGMENT

28th August, 2023

CHABA. J.

This is a first appeal. It originates from the District Land and Housing Tribunal for Ulanga, at Mahenge (the DLHT) in Land Application No. 16 of 2020. The appellant has raised four (4) grounds of appeal in his memorandum. Before reproducing the same, I find it important to highlight a brief background to this appeal as it can be ascertained from the trial DLHT's records.

It goes like this: The appellant, Hussein Ally Temela on 9th September, 2020 filed an application against the respondent (Farhani Ngamele) for trespassing over his land farm measuring 16 acres, located at Milengamachi Hamlet in Msufini Village, Minepa Ward within the District of Ulanga in Morogoro Region.

Before the trial DLHT, the appellant alleged via his application that, his farm (suit land) is bordered with neighbours including; Dogo Kahipira in the North, Athuman Likungilo in the South, Mekidadi Namtumka in the East and Habibu Temela and Rozi Mahundi on the West side. He averred further that, he acquired the disputed land through clearing a virgin bush land and had been cultivating crops and remained in lawful occupation without any interference since 2002 until 2016. However, in the year 2017, the respondent herein invaded his farm and destroyed his crops without any colour of right. It is on record that, the respondent disputed the location of the suit land which is situated (Milengamachi Hamlet within Msufini Village at Minepa Ward) and replied that, she had never owned any farm in the alleged location. She also denied to have known any of the mentioned bordering neighbours.

As the matter was already before the DLHT, it proceeded to hear both parties and their witnesses. At the height of trial, the Hon. trial Chairperson disbelieved the evidence adduced by the appellant and concluded that, the appellant failed to prove his allegations against the respondent on the required standards. It was the finding of the trial DLHT that, the pleadings lodged by the appellant at the DLHT and the evidences adduced during the trial, do not tie his case against the respondent.

Since the appellant's story was contrary to what he pleaded in his application, the DLHT had no other option, rather than dismissing the application with costs.

Aggrieved by that decision, the appellant sought the legal services from a trained legal mind person namely, Mr. Niragira Deo from Niragira Advocates & Co., to assist him pursuing the present appeal. In so doing, Mr. Niragira involved to prepare and drew the memorandum of appeal and represented appellant. The grounds of appeal are: -

1. That, the trial tribunal erred in law and facts by allowing the case without joinder of the necessary party.
2. That, the trial tribunal erred in law and facts by allowing the application which is time barred.
3. That, the trial tribunal erred in law and facts when relied on the document that was not tendered as exhibit before the tribunal.
4. That, the trial tribunal erred in law and facts when pronouncing the Judgment in favour of the respondent who did not prove on how he possessed the land.

On the strength of the above grounds of appeal, the appellant invited this Court to allow the appeal, order costs to be borne by the respondent and declare him as a lawful owner. In addition, he prayed the Court to set aside the impugned judgment and decree stemmed therefrom.

On the other side, the respondent contested the grounds of appeal and supported the decision of the trial DLHT, hence prayed the Court to dismiss the appeal with costs and uphold the decision of the trial Tribunal. More-over, both

parties through their pleadings, prayed the Court to issue any other orders where the interest of justice so demands.

At the hearing of the appeal on 20th December, 2022, both parties appeared in persons, and unrepresented. With the parties' consensus, it was agreed that this appeal be argued by way of written submissions. In this regard, the appellant was supposed to file his written submission in chief on or before 3rd January, 2023, whereas the respondent's reply to submission in chief had to be filed on 18th January, 2023. Rejoinder (if any) by the appellant had to be lodged on 26th January, 2023. Both parties complied with the Court's scheduled orders without fail.

However, before considering and dwelling on the parties' written submissions in line with the grounds of appeal, being the first appellate Court, I have in mind that, at this first appellate stage, I am duty bound to re-evaluate the evidences on records and see whether the trial DLHT properly considered and evaluated the evidences from both sides. Again, I am aware that in so doing, I am supposed to make the appropriate finding and come up with my own decisions. [See: **Siza Patrice Vs. Republic**, Criminal Appeal No. 19 of 2010 (CAT sitting at Mwanza) and **Fred Samwel @ Kindumba Vs. Republic**, Criminal Appeal No. 68 of 2021 (HCT – Sumbawanga)].

I have gone through the judgment, decree and proceedings of the trial DLHT. The proceedings were handwritten showing that the records began to be recorded from 20th October, 2020 up to 21st April, 2022. As noted above, I

have had ample time to read and understand what actually transpired at the trial DLHT. Further, I had an opportunity to scan and peruse the application filed by the appellant herein together with the reply to the application lodged by the respondent. The records show that, the applicant was represented by Mr. Paschal Paschal Luhengo from Paluhengo & Co. Advocates.

Having gone through all parties' pleadings and the judgment of the trial DLHT; at the outset, I wish to state my position that, in my unfeigned opinion, I am compelled to hold that, as correctly decided by the trial DLHT, the appellant did not prove his case on the preponderance of balance of probability. I find that, the reasoning aired by the trial Chairperson at pages 4 - 5 of the typed trial Tribunal's judgment, is correct and with all respect, I wish to quote as hereunder: -

"Mwombaji katika hati ya madai katika kipengele cha 3 kinachoonyesha ardhi bishaniwa ilipo, alieleza wazi kuwa ardhi bishaniwa ipo katika Kitongoji cha Milengamachi, Kijiji cha Msufini, kata ya Minepa. Lakini katika ushahidi wake alieleza kuwa ardhi bishaniwa ipo katika Kitongoji cha Mikoroshini, Kijiji cha Mbuyuni, kata ya Minepa. Ushahidi wa mwombaji haushabiani na maelezo yaliyopo kwenye hati ya madai juu ya eneo lilipo. Ushahidi wa mwombaji umeleta hoja mpya ya eneo lilipo katika hatua ya ushahidi jambo ambalo sio sahihi.

Lengo la kuwa na hati ya madai au utetezi ni kumpa taarifa mdaawa katika shauri husika ili aweze kuandaa ushahidi sahihi. Taarifa za mwombaji alizoweka kwenye hati ya madai zilichukuliwa na mjibu maombi ambaye aliandaa utetezi wake kulingana na madai yaliyowasilishwa. Ni wazi kwamba ushahidi wa mwombaji (SM-1) hauungi mkono madai alivyowasilisha kuhusu eneo lilipo".

Paragraph 3 found in the applicant's application, which is a subject of the instant appeal read as follows: -

"That the location and address of the suit premises is land measuring 16 acres bordering with Plots of Dogo Kahipira in the North, Athuman Likungilo in the South, Mekidadi Namtumka in the East and Habibu Temela and Rozi Mahundi in the West in Milengamachi hamlet in Msufini Village, Minepa ward in Ulanga District". [Bold is mine].

In reply to the above, the respondent, Farhani Ngamela on 9th November, 2020 vehemently disputed the location of the suit premises by filing a written statement of defence. Her response under paragraph 2 of the WSD is to the effect that: -

"That, the contents of paragraph 3 of the applicant's application are contested in the sense that the respondent's land is not located at Msufini village nor does it border the persons mentioned".

From the above excerpts of the parties' pleadings, it is crystal clear that the respondent on being duly served with the applicant's application, prepared herself to defend the allegation before the trial Tribunal in line with the applicant's application. The proceedings of the trial DLHT shows that, on 24th August, 2021 the presiding Chairperson read over and explained the claims contained in the said application to the respondent before the DLHT, proceeded to draw the controlling issues for determination. For ease of reference, I propose to reproduce what exactly transpired at the trial DLHT: -

Baraza:

"Maudhui ya maombi haya yanasomwa na kuelezwa kwa mjibu maombi ambaye anajibu kama itakavyoonekana hapa chini;

Mjibu Maombi: *Nakataa madai hayo dhidi yangu sio ya kweli.*

Baraza: *Baraza litaongoza wadaawa kuandaa hoja bishaniwa kama zinavyoonekana hapa chini.*

Signed:

24/08/2021

Hoja Bishaniwa:

- 1. Je mwombaji ni mmiliki halali wa ardhi bishaniwa?***
- 2. Nafuu zipi wadaawa wanastahili***



Signed

24/08/2021".

As depicted from the above proceedings, no doubt that, the trial DLHT prepared to hear and receive the evidences from both parties based on their own pleadings lodged at the DLHT. In the same wavelength, I also believe that, the respondent prepared to hear the appellant elaborating his claims in line with the lodged application.

Nevertheless, the records divulges that, the appellant was well informed since on 9th November, 2020 through the respondent's written statement of defence that, the alleged disputed suit land is neither located at Msufini area, nor bordering with the persons mentioned by the appellant. But the appellant (applicant) remained silent until on the 24th August, 2021, which is almost 10 months from the date he received (duly served) the said written statement of defence. Surprisingly, during cross-examination, the appellant changed his story and for reasons better known by himself, he shifted his complains and blamed his learned Counsel stating that he was the one who prepared the lodged application. But as a matter of common sense, usually the Counsel prepares pleadings relying upon the information he or she received from his or her client (client's story) upon being dully instructed, and not otherwise.

For instance, in my humble opinion, assuming that the learned Counsel for the appellant/applicant is the one who wrongly prepared and drew the appellant's pleadings, still the records will remain unchanged for a reason that,

the applicant stayed with the respondent's written statement of defence for almost ten (10) months prior to the hearing of the Application at the DLHT. As gleaned from the evidence of the appellant when was cross-examined by respondent, his response shows that, I quote: -

"Nimekuja hapa kwa kesi ya shamba. Shamba lipo Kitongoji cha Mikoroshini Kijiji cha Mbuyuni. Mwanasheria wangu alikosea jina la Kijiji ninachoishi, aliandika misufini Kitongoji cha Milengamachi ndipo lilipo shamba".

Besides, I have further, gone through the verification clause on the appellant's application filed before the trial Tribunal on 9th September, 2020 and revealed the learned Counsel for the appellant/applicant, Mr. Paschal Paschal Luhengo verified as follows: -

Verification

"I, Paschal Paschal Luhengo being an advocate in this case hereby certify that, what have been stated above from paragraphs 1, 2, 3, 4, 5, 6 and 7 is true to the best of **the information supplied to me by HUSSEIN ALLY TEMELA/THE APPLICANT.**"

The above quoted excerpt of the verification from the appellant/applicant's application, it cannot be said that what was certified by the Counsel for the appellant / applicant on 9th September, 2020 as it was stated in paragraphs 1,

2, 3, 4, 5, 6 and 7 respectively, and believed by him to be true to the best of the information supplied to him by the appellant, HUSSEIN ALLY TEMELA / THE APPLICANT was wrong information. I think in my view that, this is an afterthought by the appellant. It is trite law that, any evidence of information procured by any of the parties to the case which does not support the pleaded facts or is at variance with the pleaded facts must be ignored by the Court. This position of the law was well uttered by the CAT in the case of **Barclays Bank (T) Ltd Vs. Jacob Muro**, Civil Appeal No. 357 of 2019 [2020] TZCA 1875 (unreported), where it was held: -

"We feel compelled at this point, to restate the time hounoured principle of law that parties are bound by their own pleadings and that any evidence procured by any of the parties which does not support the pleaded facts or is at variance with the pleaded facts must be ignored." [Emphasize added].

Upon re-evaluating the evidences adduced and recorded at the trial Tribunal and noted the above shown anomaly, and guided by the authority in the case of **Barclays Bank (T) Ltd Vs. Jacob Muro** (supra), I fully subscribe to the finding and observation made by the trial Tribunal that, after ignoring what was adduced by the appellant at trial, nothing remained to his case as pleadings (pleaded by the appellant) in the said application.

For the reasons stated above, suffice to say that, the anomalies spotted by this Court are sufficient to dispose of the entire appeal even without laboring more energy on the grounds of appeal fronted by the appellant. Accordingly, I find this appeal non-meritorious, sustain the decision of the District Land and Housing Tribunal for Morogoro, at Morogoro and proceed to dismiss it with costs. It is so ordered.

DATED at MOROGORO this 28th day of August, 2023.



M. J. Chaba

JUDGE

28/08/2023

Court:

Judgment delivered at my hand and the Seal of the Court in Chamber's this 28th day of August, 2023 in the of absence both parties, yet were duly informed via their own mobile phone's numbers.



A handwritten signature in blue ink, appearing to be "E. C. Lukumai".

E. C. Lukumai

Ag, DR

28/08/2023

A small, handwritten mark or scribble in blue ink at the bottom right of the page.

Court:

Right of Appeal to the Court of Appeal of Tanzania fully explained.



E. C. Lukumai



Ag, DR

28/08/2023

